



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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TO: RI Marine Fisheries Council

FROM: Mark Gibson, Deputy Chief Marine Fisheries

DATE: May 3, 2004

SUBJECT: Regulatory Decisions from March 2, 2004 public hearing

This memorandum identifies regulatory actions taken by the RIDEM pursuant to the public hearing of March 2, 2004 and the follow up RIMFC meeting of March 15, 2004. Acting Director Vincent considered comments and recommendations from the public hearing, the RIMFC, and from the Fish and Wildlife Division. The regulations to implement these decisions were filed with the Secretary of State April 2, 2004 and became effective on April 22, 2004.

Amend current lobster commercial regulations to limit the trap tags allowed on a pot at any one time: This proposal was brought forward by industry via the Lobster Advisory Panel out of concern that many people were keeping several tags on their lobster pots making identification and enforcement very difficult. The proposed regulation limited the number of trap tags allowed on a lobster pot to two; the current and immediately previous year. There was one comment made at the hearing by K. Blanchard of DEM Law Enforcement to change the specified penalty in the proposed language to the general marine fisheries penalty clause found in RIGL 20-3-3. The Council recommended adoption of the proposal as submitted with the substitution of the general penalty clause RIGL 20-3-3. The Division also recommended adoption of this proposal to improve enforceability of the lobster trap tag regulations. The Director concurred and approved the regulation for filing as proposed by Council and Division.

Amend current lobster commercial regulations to increase the circular escape vent size: This proposal was brought forward by industry via the Lobster Advisory Panel consistent with requirements of ASMFC Addendum 4 to the Lobster FMP. The proposed regulation increased the escape vent size for circular escape vents to give them comparable escapement properties to the required rectangular escape vent. There were no public comments made at the public hearing. The Council recommended adoption of the proposal as submitted. The Division recommended adoption of the proposal with a December 31, 2004 effective date. This allowed industry to procure vents from

manufacturers and make the needed modifications. The Director concurred with the Division and approved the regulation as proposed with the December 31st date.

Modify possession limits, seasons, and quota allocations for the commercial tautog fishery: This item consisted of several different proposals developed by industry representatives as well as the Division of Fish and Wildlife. The proposed changes altered the open areas where fishing for tautog would be allowed by enacting closure lines in state waters as well as changing the seasons and possession limits. The four proposals were status quo, a DFW proposal which closed all state waters to commercial tautog fishing in state waters until July 1st, a spawning closure line in the upper bay where commercial fishing would be closed north of the line until July 1st (this is the advisory panel preferred option), and a spawning closure line which followed the bridges where commercial fishing would be closed north of the line until July 1st. The spawning closure lines were proposed to protect spawning tautog. There were several public comments made at the public hearing. The Inshore Fisherman's Association recommended beginning January 1st with 100% of the quota and shutting the fishery down when it is entirely harvested, also stating that the DFW did not give an adequate reason for further conservation measures. The Commercial Fishermen's Association echoed this sentiment but did not recommend any options at the public hearing. At the subsequent RIMFC meeting the Commercial Fishermen's Association recommended the advisory panel preferred option. A floating fish trap representative recommended the advisory panel preferred option. The Council recommended adoption of the advisory panel preferred option. The Division recommended taking no action this year to change commercial tautog regulations. Because of procedural error, no compatible recreational measures were noticed for public hearing and subsequent action. It would not be equitable or effective to restrict only the commercial fishery in 2004. Further, there is evidence of some stock rebuilding bringing into question the need for more restrictive measures. The Division is committed to reviewing tautog stock status in 2004 and submitting a management plan to the ASMFC for implementation in 2005. A comprehensive management program for tautog in the state can be formulated then. The Director concurred with the Division recommendation and declined to change commercial tautog regulations at this time with the understanding that the tautog advisory panel would work with Division on the 2005 plan.

Adopt a weekly landing permit program for the commercial summer flounder fishery during the winter 1 sub period: This program was enacted via emergency rule following persistent recommendations by the members of the Commercial Fishermen's Association. It allowed fishermen to take a higher possession limit than current regulations allow as long as they don't exceed a total of 3,000 pounds in any one week. This program was proposed to alleviate some of the hazards of the fishery during the winter months that are created by poor weather and sea conditions (the program was initially adopted by DEM pursuant to emergency regulations which were filed with the Office of the Secretary of State on January 5, 2004). There were three comments provided at the public hearing, all from Commercial Fishermen's Association members. The three individuals all voiced their support for the program but stated that it needs to be modified from the current plan. One of the members handed in a written proposal

outlining a plan that covers all sub periods in the year. The Council recommended tabling the item and allowing a working group to develop an improved plan for the 2005 fishing year. The Division concurred with the recommendation, committed to working with industry on improvements, and recommended that the emergency regulations operating in 2004 be allowed to expire. The Director concurred with the Council and Division. The emergency rules have expired and the Division is hosting meetings with industry.

Adopt a weekly landing permit program for the spiny dogfish fishery: This program was enacted to allow fishermen to take a higher possession limit than current regulations allow as long as they don't exceed a total of 21,000 pounds in any one week. This program was proposed to allow commercial fishermen to catch the entire quota allotted to them and to make the spiny dogfish fishery more economically viable (such a program was initially adopted by DEM pursuant to emergency regulations which were filed with the Office of the Secretary of State on October 24, 2003). There was one comment provided at the public hearing to continue the program. The Council recommended adoption of the proposal as submitted even with the knowledge that the NMFS was promulgating regulations that would terminate the program on May 1, 2004. The Division recommended that the Department take no action to extend this program and instead conform to federal regulations. The Director agreed with the Division. The program expired and was replaced with federal rules effective May 1, 2004.

Modify the season, bag limit and minimum size for the recreational scup fishery: Due to a new regionalization program from ASMFC, the RI recreational scup fishery was initially faced with a 57% reduction for the upcoming season. A joint effort by the RIMFC, DFW, and other states convinced the ASMFC to require only a 25% reduction in Rhode Island. At the public hearing, options reflecting the 57% reduction were presented. At the subsequent RIMFC meeting the Council and public were presented with new options that were based on the new 25% reduction. The consensus between the public and the Council was to go with the option that had a 50 fish possession limit, increased the minimum size by ½ inch to 10.5" and had a closed season going from July 26th to August 3rd inclusive. The Division recommended adoption of the Council proposal conditional to Enforcement Division concurrence. They saw a potential problem with compliance in regard to the short, 9 day season. Increasing the minimum size to 11" would negate any need for season closure and was viewed by Division as an alternative to the Council preference. After consultation with the Enforcement Division, the Director approved the Council recommendation.

Modify the season, bag limit and minimum size for the recreational summer flounder fishery: Rhode Island was allowed a 25% liberalization in the summer flounder recreational fishery for 2004 due to under harvesting by RI anglers in 2003 and an increase in the summer flounder stock. Several options were presented to the public at the public hearing. A number of public comments were considered. Comments were basically centered around two opinions, the first being support for option 3 which was a 17.5" minimum size, a 6 fish bag limit, and a season running from April 1st through December 31st. This was projected to increase landings by 12%. The second opinion was for the DFW to come up with some additional options to present at the next RIMFC

meeting. In response, the DFW produced an additional option of a 17" minimum size and a status quo season at the subsequent RIMFC meeting. This provided for a 17.8% increase. The Council recommended a compromise option which was a 17.5" minimum size, a 7 fish bag limit, and a season running from April 1st through December 31st. This gives a 12% increase. The Division recommended adopting option 3 with the 6 fish bag limit. Division noted that the Council and industry conclusion of limited impact of possession limits on total landings is conditioned on the use of 1999-2001 MRFSS data. Population abundance and angler catch rates of summer flounder have increased since then and adherence to the 6 fish bag limit will limit the likelihood of a recreational overage in 2004. The Director concluded that the Council compromise option was sufficiently precautionary and approved it.

Amend commercial floating fish trap scup regulations: These were proposals to modify possession limits, seasons, and allocations for the commercial floating fish trap fishery for scup. The public hearing included proposals from the DFW as well as from different industry stakeholders. At the public hearing there were two competing public comments received, one group for status quo and one group for an option which reserved some fish for later in the summer. Consequently, the floating fish trap companies met and provided the Council and the DFW with a written compromise plan that had various percentage quota triggers which decrease possession limits. The intent was to reserve some of the quota for later in the summer. The Council recommended adoption of the industry plan with the inclusion of an August 1st date at which time the DFW would make remaining trap quota available to the other gear types. The quota roll over provision would insure that the entire quota allotted to RI would be harvested. The Division asked for more flexibility and recommended adoption of the main proposal but with language stating that August 1 is the latest date for actuating the roll over with a requirement to consult with the trap industry for roll over prior to August 1. The Director concurred with the Division but emphasized the need for meaningful consultation with industry prior to initiating roll over.